

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: : **Chapter 13**
Gallagher, Charles M.
Gallagher, Rachael L. : **15-14525 amc**
Debtors/Plaintiffs :
 : **Adversary No.**
v. :
 :
National Bank of Malvern :
Defendant :

Complaint Pursuant to 11 U.S.C. Section 506(a)
To Determine Creditor's Secured Status

The Debtors, by their attorney, requests this court, pursuant to 11 U.S.C. Section 506 (a) to determine the value of interest of National Bank of Malvern (hereinafter referred to Defendant) in debtor's property and determine the amount of their allowed secured claim, if any. In support of this complaint the Debtors state as follows:

1. The Debtor filed the instant voluntary petition under Chapter 13 of the Bankruptcy Code on June 26, 2015.

2. At the time the Debtor filed the instant bankruptcy petition, the fair market value of the Debtor's interest in real estate located at 850 Skelp Level Road, West Chester, PA 19380, was \$470,000.00. (See a true and correct copy of Debtor's Proof of Value attached hereto as Exhibit A).

3. The Debtors' interest in the real estate is subject to a first lien arising out of a first mortgage dated July 1, 2005, duly recorded on July 11, 2005 with the Recorder of Deeds, Chester County, PA, Book 6544 and Page 1096, in favor of Mortgage Electronic Registration Systems, Incorporated as nominee for Arlington Capitol Mortgage Corp., in the amount of Five Hundred and Twenty Thousand Dollars (\$520,000.00). (Hereinafter referred to as "first mortgage"). (See a true and correct copy of the Proof of Claim attached hereto as Exhibit B).

4. The Debtor's interest in the real estate is subject to a second lien arising out of a second mortgage dated February 11, 2008, duly recorded on April 11, 2008 with the Recorder of Deeds of Chester, County, PA, Book 7408 and Page 788, in favor of Wachovia Bank, N.A., in the amount of One Hundred Twenty Six Thousand, Four Hundred and Twenty Nine Dollars (\$126,429.00). (Hereinafter referred to as "second mortgage"). (See a true and correct copy of the mortgage attached hereto as Exhibit C).

5. The Debtor's interest in the real estate is also subject to third and fourth liens arising out of a third Open End Mortgage and Security Agreement dated February 10, 2009, duly recorded on February 23, 2009 with the Recorder of Deeds of Chester

County, PA, Book 7596 and page 257 and a fourth mortgage date August 19, 2011, duly recorded on August 26, 2011 with the Recorder of Deeds of Chester County, PA, Book 8235 and Page 1266 both in favor of National Bank of Malvern, in the amount of Fifty Thousand Dollars (\$50,000.00) and Twenty Thousand Dollars (\$20,000.00) respectively. (Hereinafter referred to as "third mortgage" and "fourth mortgage"). (See a true and correct copy of the mortgages attached hereto as Exhibit D).

6. Thereafter, the first mortgage was assigned to Deutsche Bank National Trust Company on November 20, 2013 (See Exhibit B) and the second mortgage company merged with Wells Fargo Bank National Association on or about March 20, 2010. (See Exhibit C).

7. Under the plain terms of National Bank of Malvern's third and fourth mortgages, in addition to creating security interests in the debtors' primary residence, the mortgages also establish a security interest in **"ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY"**. (See Exhibit D).

8. Since National Bank of Malvern holds a security interest in Debtors' personal property therefore, PNC is not entitled to the "anti-modification" protections of 11 U.S.C. Section 1322(b)(2) and the defendant's allowed secured claim may be extinguished pursuant to Section 506(a)(1) of the Bankruptcy Code.

9. On or about September 8, 2015, Deutsche Bank National Trust Company, by its Authorized Agent, America's Servicing Company filed a secured proof of claim in the amount of \$521,382.36. (See Exhibit B).

10. On or about November 17, 2015, Wells Fargo Bank, N.A. filed a secured proof of claim in the amount of \$122,049.46. (See Exhibit C).

11. To date a proof of claim has not been filed by National Bank of Malvern for the third and fourth mortgages and the last date to file claims in the instant matter was on December 8, 2015.

12. The third and fourth mortgages held by National Bank of Malvern, are junior to the first and second mortgages held by Deutsche Bank National Trust Company and Wells Fargo.

13. Pursuant to 11 U.S.C. Section 506(a), the third and fourth mortgages held by National Bank of Malvern, its successors and/or assigns is wholly unsecured.

Wherefore, the Debtors pray this Court to:

a. Determine that the third and fourth mortgages held by National Bank of Malvern, its successors and/or assigns is wholly unsecured;

b. Determine that any secured claim filed by National Bank of Malvern shall be treated as general unsecured claims; and

c. Order National Bank of Malvern, its successors and/or assigns upon discharge to have its third and fourth mortgages marked "SATISFIED" and removed from the mortgage index as recorded at the Recorder of Deeds, Chester County, PA.

Dated: March 13, 2016

/s"/Mitchell J. Prince, Esquire
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